

UNITED STATES DISTRICT COURT

FILED 04 SEP '24 13:29 USDC-ORP

DISTRICT OF OREGON

PORTLAND DIVISION

MARICELA RAMIREZ,

Plaintiff,

COMPLAINT **3:24-CV-1470-SB**

Versus

VIOLATION OF EMERGENCY MEDICAL
TREATMENT AND ACTIVE LABOR ACT.
42 U.S. Code § 1395dd

OREGON HEALTH AND SCIENCE
UNIVERSITY; KATHERINE HAVARD, PA-
C; BRENDAN J. CUNNINGHAM, DO; DOES
1 TO 100, Inclusive

(REQUEST FOR JURY TRIAL)

Defendants.

PARTIES TO THIS COMPLAINT

Plaintiff's Name, Address and Phone Number:

MARICELA RAMIREZ, PRO SE
12638 NW Barnes Road, # 8
Portland, OR 97229
(503)644-7173

Defendants' Name, Address and Phone Number:

OREGON HEALTH AND SCIENCE UNIVERSITY HOSPITAL
KATHERINE HAVARD, PA-C
BRENDAN J. CUNNINGHAM, DO.
Central Services
Risk Management
Mail Code: L328
3181 S.W. Sam Jackson Park Road
Portland, OR 97239

**DEFENDANTS KATHERINE HAVARD, PA-C AND BRENDAN CUNNINGHAM, DO
AND DOES 1 TO 100, INCLUSIVE, ARE BEING SUED IN BOTH OFFICIAL AND
INDIVIDUAL CAPACITIES.**

COMPLAINT

COMES NOW Plaintiff MARICELA RAMIREZ, individually, and for cause of action
against Defendants, and each of them, KATHERINE HAVARD, PA-C and BRENDAN
CUNNINGHAM, DO and DOES 1 to 100 in both official and individual capacities, as follows:

NATURE OF THE CASE

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3 1. This is a case of violation of the Emergency Medical Treatment and Active Labor Act
4 (EMTALA) and Intentional Infliction of Emotional Distress. Plaintiff alleges that Defendants
5 engaged in violation of the EMTALA. Plaintiff seeks injunctive relief from these practices;
6 general, compensatory and punitive damages; and an award of costs, expenses, and attorneys'
7 fees.
8

JURISDICTION AND VENUE

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10 2. At all material times, OREGON HEALTH AND SCIENCE UNIVERSITY
11 (hereinafter "OHSU") was and is a corporation of the State of Oregon doing regular and
12 sustained business in Multnomah County, Oregon as a public hospital providing inpatient and
13 outpatient medical, surgical and hospital care to patients.

14 3. At all material times OHSU's employees, including KATHERINE HAVARD, PA-C
15 and BRENDAN CUNNINGHAM, DO, were working in the course and scope of their
16 employment for OHSU TUALITY ER and both were working under color of law.

17 4. This Court has jurisdiction over Plaintiff's claims of violations of Plaintiff's federal
18 Constitutional rights pursuant to 28 U.S.C. §§1331 and 1343(a)(4). Moreover, this Court has
19 jurisdiction of Plaintiffs' claims pursuant to the Emergency Medical Treatment and Active Labor
20 Act.
21

22 5. Venue is proper under 28 U.S.C. § 1391(b) (c), in that one or more of the defendants
23 reside in the District of Oregon and Plaintiffs' claims for relief arose in this district.
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EMTALA STATUTORY FRAMEWORK

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26 6. EMTALA states, inter alia, that any hospital that receives Medicare funds and operates
27 an emergency department:
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- i. must stabilize any individual determined to have an emergency medical condition, see 42 U.S.C. § 1395dd(b); and
- ii. may not transfer (which includes discharge) any individual with an emergency medical condition who has not been stabilized, unless, inter alia, the individual requests a transfer or a physician certifies that the benefits of a transfer to another medical facility outweigh the increased risks to the patient, see id. § 1395dd(c).

7. EMTALA defines an emergency medical condition as “a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the individual . . . in serious jeopardy, [cause] serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.” Id. § 1395dd(e)(1)(A).

8. EMTALA defines “to stabilize” to mean “to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility[.]” Id. § 1395dd(e)(3)(A).

9. OHSU ED Defendants receive Medicare funds and operate emergency departments and are subject to the requirements of EMTALA.

FACTS COMMON TO ALL CAUSES OF ACTION

10. On September 8 and September 16, 2022, Plaintiff went to the OHSU ED TUALITY HEALTHCARE because she fell and suffered of extreme difficulty standing-up and walking, extreme diffuse pain and worsening symptoms of kidney failure, liver and gallbladder diseases, cancer, etc. The ED attending physicians KATHERINE HAVARD, PA-C and BRENDAN CUNNINGHAM, DO, and OHSU ED TUALITY HEALTHCARE Staff intentionally denied appropriate medical screening to Plaintiff for her emergency medical condition and palliative

care. Moreover, Defendants treated Plaintiff differently and intentionally discriminated against her on the basis of her Mexican race.

FIRST CLAIM FOR RELIEF:

FIRST CLAIM FOR RELIEF: Violation of Emergency Medical Treatment and Active Labor Act (“EMTALA”) 42 U.S. Code § 1395dd.

(Brought Against Oregon Health and Science University Hospital)

11. Plaintiff repeats and realleges each and every foregoing and subsequent allegation in the complaint as though said paragraphs were set forth in full herein.”

12. September 8 and September 16, 2022, Plaintiff went to the OHSU ED TUALITY HEALTHCARE because she fell and suffered of extreme difficulty standing-up and walking, extreme diffuse pain and weakness and worsening symptoms of kidney failure, liver and gallbladder diseases, cancer, etc.

13. OHSU ED TUALITY HEALTHCARE doctors did not provide appropriate medical screening to Plaintiff as required by EMTALA.

“(a)MEDICAL SCREENING REQUIREMENT

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual’s behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital’s emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists.

(b)NECESSARY STABILIZING TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND LABOR

(1)IN GENERAL If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

1 (A) within the staff and facilities available at the hospital, for such further medical
2 examination and such treatment as may be required to stabilize the medical condition, or

3 (B) for transfer of the individual to another medical facility in accordance with subsection

4
5 14. OHSU ED TUALITY HEALTHCARE attending physicians denied to Plaintiff
6 appropriate medical screening, hospitalization and deliberately denied to Plaintiff adequate
7 medical care for her emergency medical condition. OHSU ED TUALITY HEALTHCARE
8 attending physicians discharged Plaintiff from the emergency room knowing that she is not in
9 stable condition because she suffered of extreme difficulty standing-up and walking, extreme
10 diffuse pain and weakness and worsening symptoms of kidney failure, liver and gallbladder
11 diseases, cancer, etc. OHSU ED TUALITY HEALTHCARE attending physicians violated
12 EMTALA. 42 U.S. Code § 1395dd.
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15 15. Defendants showed a reckless, deliberate and outrageous indifference to a highly
16 unreasonable risk of harm to Plaintiff. Defendants acted with a conscious and deliberate
17 indifference to the health, safety and welfare of Plaintiff. As such, Plaintiff is entitled to receive
18 punitive damages as determined reasonable by a jury
19

20 16. As a result of the constitutional violations alleged herein, Plaintiff suffers of extreme
21 difficulty standing up and walking, worsening weakness of her right hand, arm, leg and foot and
22 worsening of osteoarthritis of her hands, elbows, knees, ankles, feet, spine and hips and
23 worsening of her cancer, chronic kidney failure, etc. These injuries, and the consequences of
24 them, have caused Plaintiff to suffer economic damages in the form of medical care and
25 expenses, in a reasonable amount of approximately over \$100,000.00.

26 17. As a result of the above-described constitutional violations, plaintiff suffered from
27 severe emotional distress, sense of betrayal and abandonment extreme physical pain and her
28 medical condition worsened, all to her noneconomic damages in an amount to be proven at trial.

1 18. As a further result of the constitutional violations alleged herein, Plaintiff also
2 suffered non-economic damages in the form of pain and fear. Plaintiff suffered non-economic
3 damages in an amount determined to be reasonable by a jury.

4
5 19. As a direct and proximate result of Defendants' violations of Plaintiff's constitutional
6 rights, Plaintiff suffered damages to be proven at trial.

7 20. In performing the acts herein alleged, Defendants acted maliciously, fraudulently, and
8 oppressively, thereby justifying an award of punitive damages.

9 WHEREFORE, Plaintiff seeks relief as set forth below.

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11 SECOND CLAIM FOR RELIEF

12 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

13 (Brought Against OHSU)

14 21. Plaintiff repeats and realleges each and every foregoing and subsequent allegation in
15 the complaint as though said paragraphs were set forth in full herein.

16 22. Defendants' conduct was outrageous, intentional and malicious, and was done with
17 reckless disregard of the probability of causing Plaintiff to suffer extreme physical pain and
18 extreme emotional distress. Defendants' acts constituted an extraordinary transgression of the
19 bounds of socially tolerable conduct.

20
21 23. As a sole, direct and proximate result of the above described conduct of the
22 Defendants, and each of them, Plaintiff's weakness of her right hand, arm, leg and foot worsened
23 and the osteoarthritis of her hands, elbows, knees, ankles and feet worsened and also her cancer,
24 and chronic kidney failure, etc. worsened. Plaintiff is informed and believes and, upon such
25 information and belief, alleges worsening weakness of her right hand, arm, leg and foot and
26 worsening osteoarthritis of her hands, elbows, knees, ankles, feet, spine and hips and also
27 worsening of her cancer, and chronic kidney failure, etc., extreme difficulty standing-up,
28

1 weakness and walking resulted in permanent disability to her, all to her general and non-
2 economic damages in an amount that is in excess of this Court's minimum jurisdictional amount
3 and which will be stated according to proof.
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5 24. The actions of the Defendants constitute reprehensible and despicable conduct that
6 subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights. In doing the
7 foregoing acts, the Defendants acted with malice and with willful and conscious disregard of the
8 safety and well-being of Plaintiff.
9

10 25. Defendants' conduct in confirming and ratifying that conduct was done with
11 knowledge that Plaintiff's life-threatening medical condition would worsen and emotional
12 distress would thereby increase, and was done with a wanton and reckless disregard of the
13 consequences to Plaintiff. Defendants' conduct was extreme and outrageous. Defendants' acts
14 constituted an extraordinary transgression of the bounds of socially tolerable conduct. Such
15 conduct qualifies as despicable conduct, warranting the imposition of punitive and exemplary
16 damages against the Defendants, and each of them.
17

18 WHEREFORE, Plaintiff seeks relief as set forth below.

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as
21 follows:
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- 23 1. Findings of constitutional violations committed by Defendants against Plaintiff
- 24 2. For economic damages in the amount of over \$100,000.00 or as found to be
25 reasonable by a jury;
- 26 3. For non-economic damages in the amount of over 100,000.00 or as found to be
27 reasonable by a jury;
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- 1 4. For punitive damages in the amount of \$1,000,000 or as found to be reasonable by a
- 2 jury; and
- 3
- 4 5. For his attorney fees, costs and disbursements incurred herein.
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- 6 6. For such further and other relief as this court deems just and proper.

6 JURY DEMAND:

7 116. Plaintiff hereby respectfully demands a jury trial on all issues so triable.

8 Respectfully Submitted,

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10 Dated: September 4, 2024

11 By: Maricela Ramirez
MARICELA RAMIREZ, Plaintiff

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